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November 15, 2008

Honorable Chief Justice and Justices of the California Supreme Court
Supreme Court of California
350 McAllister Street
San Francisco, California 94102

Re: *Amicus Curiae Letter re Karen L. Strauss, et al. v. Mark B. Horton, et al. (S168047) (Petition for Writ of Mandate)*

To the Honorable Ronald M. George, Chief Justice of California,
and the Honorable Justices of the California Supreme Court:

Pursuant to California Rule of Court 8.500(g), as amicus curiae, I respectfully submit this letter in opposition to the Amended Petition for Extraordinary Relief, Including Writ of Mandate and Request for Immediate Injunctive Relief, in *Karen L. Strauff, et al. v. Mark B. Horton*, et al. (S168047), which seeks to challenge the validity of Proposition 8 (the "Petition").

I write for myself only, and only to provide to Your Honors discussion and citations concerning what, I respectfully submit, are outcome determinative matters not discussed in the papers now before this Court.

I. Introduction and Summary of Argument

The Petition and supporting amicus letter on behalf of a number of members of the California State Legislature argue that a fundamental right – the right of gay and lesbian couples to marry – is at stake in the Petition.

A fundamental right is at stake in the Petition. The issue, however, is not whether this Court's decision in *In re Marriage Cases* (2008) 43 Cal.4th 757 ("*Marriage Cases*") was correct. Instead, clearly at stake is the constitutional right of the People to amend the California Constitution by initiative, a right this Court has repeatedly and eloquently described as a "precious," fundamental right:

> . . . it is our *solemn duty* jealously to guard the sovereign people's *initiative power*, 'it being *one of the most precious rights of our democratic process*.' Consistent with prior precedent, *we are*

required to resolve any reasonable doubts in favor of the exercise of this precious right.

Raven v. Deukmejian (1990) 52 Cal.3d 336 at 341 ("*Raven*"), quoting both *Brosnahan v. Brown* (1982) 32 Cal.3d 236 ("*Brosnahan*") and *Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization* (1978) 22 Cal.3d 208 ("*Amador*") and citing *Associated Home Builders, Inc. v. City of Livermore* (1976) 18 Cal.3d 582 at 591 (citations and page references omitted, emphasis supplied).

Under the California Constitution and an long and unbroken line of cases decided by this Court, Proposition 8 is valid if it is an amendment to the Constitution and invalid if it is a revision of the Constitution.

Under that line of cases, whether an initiative is an amendment or a revision depends on both a quantitative and a qualitative analysis. Under the quantitative analysis, Proposition 8 is clearly not a revision.

Under the qualitative analysis, even a short amendment can be a revision if, but only if, it accomplishes "far reaching changes in the nature of our basic governmental plan." Under the same line of cases, Proposition 8 clearly does not effect such "far reaching changes in the nature of our basic governmental plan" and is clearly not a revision.

Therefore, even though in the *Marriage Cases* hold the right of gay and lesbian people to marry is fundamental right, if Proposition 8 – which was validly adopted by the People – is invalidated, it will be the sovereign, fundamental right of the People to amend the Constitution by initiative, "one of the most precious rights of our democratic process", that will be eviscerated.

II. Statement of Interest

My interest – as a 60+ year resident of California, a taxpayer, and a voter who believes in democracy as ingrained in our State's Constitution – is, consistent with this Court's decision in *Raven*, that:

- The sovereign People's constitutional right of initiative, "one of the most precious rights of our democratic process", be preserved unless and until changed *by the People* (*Raven*, *supra*, 52 Cal.3d 336 at 341); and

- This Court therefore have before it arguments and authority, not contained in the papers filed to the date of this letter, so it may consider them in "resolv[ing] any reasonable doubts in favor of

the exercise of this precious right", which is fundamental to "the nature of our basic governmental plan" (*Raven, supra*, 52 Cal.3d 336 at 341 and 352).

These interests, I respectfully submit, are shared by California citizens generally.

III. The Relevant Provisions of the California Constitution

The following provisions of Articles II and XVIII of the California Constitution are those that, it appears, are relevant for purposes of the Petition.

Article II, Section 1, of the California Constitution reads:

> All political power is inherent in the people. Government is instituted for their protection, security, and benefit, and they have the right to alter or reform it when the public good may require.

Article II, Sections 8 (a)–(d), of the California Constitution reads (emphasis supplied):

> (a) The initiative is the power of the electors to propose statutes and amendments to the Constitution and to adopt or reject them.
>
> (b) An initiative measure may be proposed by presenting to the Secretary of State a petition that sets forth the text of the proposed statute or amendment to the Constitution and is certified to have been signed by electors equal in number to 5 percent in the case of a statute, and 8 percent in the case of an amendment to the Constitution, of the votes for all candidates for Governor at the last gubernatorial election.
>
> (c) The Secretary of State shall then submit the measure at the next general election held at least 131 days after it qualifies or at any special statewide election held prior to that general election. The Governor may call a special statewide election for the measure.
>
> (d) An initiative measure embracing more than one subject may not be submitted to the electors or have any effect.[1]

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[1] The Petition does not content that Proposition 8 embraces more than one subject matter. It is clear Proposition 8 deals with a single subject matter – whether marriages that are legal or recognized in California can be only between a man and a woman.

Article XVIII, Section 2, of the California Constitution reads (emphasis supplied):

> The Legislature by rollcall vote entered in the journal, two-thirds of the membership of each house concurring, may propose an amendment or revision of the Constitution and in the same manner may amend or withdraw its proposal. Each amendment shall be so prepared and submitted that it can be voted on separately.

Article XVIII, Section 2, of the California Constitution reads (emphasis supplied):

> The Legislature by rollcall vote entered in the journal, two-thirds of the membership of each house concurring, may submit at a general election the question whether to call a convention to revise the Constitution. If the majority vote yes on that question, within 6 months the Legislature shall provide for the convention. Delegates to a constitutional convention shall be voters elected from districts as nearly equal in population as may be practicable.

Article XVIII, Section 3, of the California Constitution reads (emphasis supplied):

> The electors may amend the Constitution by initiative.

Article XVIII, Section 4, of the California Constitution reads (emphasis supplied):

> A proposed amendment or revision shall be submitted to the electors and if approved by a majority of votes thereon takes effect the day after the election unless the measure provides otherwise. If provisions of 2 or more measures approved at the same election conflict, those of the measure receiving the highest affirmative vote shall prevail.

III. Under this Court's Jurisprudence, Proposition 8 is Clearly an Amendment to the California Constitution and Therefore a Valid Exercise of by the People of Their Initiative Power

The portions of the California Constitution underlined above provide that the People can amend the California Constitution by initiative, but that revisions of the Constitution require either: (i) action by two-thirds of the California State

Senate and Assembly and a vote of the People; or (i) action by a constitutional convention called by such a vote in the State Senate and Assembly.

This Court's jurisprudence teaches that, as used in these provisions, the words "amend" and "amendment," one the one hand, and "revise" and "revision," on the other, have different meanings.

Under this Court's jurisprudence, if Proposition 8 is an amendment to the California Constitution, it is valid as a matter of California law,[2] but if it is a revision to the California Constitution, it is invalid.

This Court's 1990 decision in *Raven* dealt in detail with the issue of when an initiative change to the California Constitution is an amendment and when it is a revision. Other Supreme Court cases, both before an after *Raven*, constitute an uninterrupted, consistent line of cases on the "amendment or revision" question and, in addition, provide helpful examples and explanation.

Raven involved the challenge on, among others, "revision rather than amendment" grounds, of an initiative known as the "Crime Victims Justice Reform Act." That initiative added numerous provisions to the California Constitution. This Court held that all but one of the initiative's changes to the Constitution were amendments and, as such, had been validly adopted. The other provision was held to be a revision and, according, was held to be invalid.

This Court's analysis in *Raven* and those other cases teaches that an initiative purporting to amend the Constitution can be valid or invalid as a revision based on its quantitative or qualitative effect, both of which must be analyzed. *Raven*, 52 Cal.3d 336 at 351-353.

A. <u>The Quantitative Effect Standard</u>

In *Raven*, this Court – quoting *Amador*, which upheld the initiative that added Proposition 13 (limitation on real property taxes and related changes) to the California Constitution, and giving examples from other cases it had decided – said an initiative could be invalid as a revision on a quantitative analysis basis, if the changes it made were:

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[2] The Petition does not contend that Proposition 8 violates the United States Constitution, and federal constitutionality is not an issue raised by the Petition.. Had such a contention been made, United States Supreme Court authority would not support federal unconstitutionality.

> "so extensive . . . as to change directly the 'substantial entirety' of the Constitution by the deletion or alteration of numerous existing provisions . . . ." (*Amador*, *supra*, 22 Cal.3d at p. 223). . . . The measure deletes no existing constitutional language and it affects only one constitutional article, namely, article I. As previously outlined, the measure adds three new sections to this article and amends a fourth section. In short, the quantitative effects on the Constitution seem no more extensive than those presented in prior cases upholding initiative measures challenged as constitutional revisions. See *Brosnahan*, *supra*, 32 Cal.3d at p. 260 [upholding measure likewise affecting only Cal. Const., Art. I]; *Amador*, *supra*, at p. 224 [upholding measure affecting only a few articles dealing with taxation]; cf. *McFadden v. Jordan* (1948) 32 Cal.2d 330, 334-335 [196 P.2d 787] [invalidating measure adding 21,000 words to Constitution and affecting 15 of its 25 articles].)

Raven, *supra*, 52 Cal.3d 336 at 351.

B. <u>Proposition 8 Passes the Quantitative Effect Standard Test</u>

Without doubt, the 14-word Proposition 8, which deals only with whether marriage valid or recognized in California may only be between a man and a woman, or may also between a man and a man or a woman and a woman, does not affect the entirety of the Constitution or anything remotely approaching it. Proposition 8 therefore unquestionably passes the quantitative effect standard test.

C. <u>The Qualitative Effect Standard</u>

With respect to the qualitative analysis of whether an initiative is invalid as a revision, this Court in *Raven*, again quoting from *Amador*, held:

> We have stated that, apart from a measure effecting widespread deletions, additions and amendments involving many constitutional articles, "**even a relatively simple enactment may accomplish such <u>far reaching changes in the nature of our basic governmental plan as to amount to a revision also</u>** . . . . [*A*]*n enactment which purported to vest all judicial power in the Legislature would amount to a revision* without regard either to the length or complexity of the measure or the number of existing articles or sections affected by such change." (*Amador, supra,* 22 Cal.3d at p. 223, italics added; see also *McFadden v. Jordan, supra,* 32 Cal.2d at pp. 347-348 [rejecting argument that revision must involve changes affecting *all* articles of Constitution].)

Raven, supra, 53 Cal.3d 336 at 351-352 (emphasis in italics in original, emphasis by bolding or bolding underlined added).

Based on this qualitative analysis, the *Raven* Court invalidated as a revision one provision of the Constitutional changes effected by Proposition 115 (the Crime Victims Justice Reform Act), continuing after the paragraph quoted immediately above:

> Proposition 115 contemplates a similar qualitative change [to that held invalid as a revision in *Amador*]. In essence and practical effect, new article I, section 24 [the one provision invalidated as a revision], would vest all judicial interpretive power, as to fundamental criminal defense rights [under California law], in the United States Supreme Court. From a qualitative standpoint, the effect of Proposition 115 is devastating.
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> * * *
>
> In effect, Proposition 115 not only unduly restricts judicial power, but it does so in a way which severely limits the independent force and effect of the California Constitution. . . .
>
> * * *
>
> Even under respondent Attorney General's "limited" construction of new article I, section 24, fundamental constitutional rights are implicated, including the rights to due process of law, equal protection of the law, assistance of counsel, and avoidance of cruel and unusual punishment. As to these rights, as well as the other important rights listed in new section 24, California courts in criminal cases would no longer have authority to interpret the state Constitution in a manner more protective of defendants' rights than extended by the federal Constitution, as construed by the United States Supreme Court.
>
> * * *
>
> Thus, Proposition 115 not only unduly restricts judicial power, but it does so in a way which severely limits the independent force and effect of the California Constitution.

Raven, supra, 52 Cal.3d 336 at 352-353 (explanatory language in brackets added).

Other provisions of Proposition 115 changed previously effective California law by amending the California Constitution to, among other things: (i) provide that the People have the right to due process and a speedy trial in criminal cases; (ii) declare hearsay evidence admissible at preliminary hearings in criminal cases; and (iii) require reciprocal discovery in criminal cases (not just disclosure of exculpatory evidence and other matters by the prosecution). *Raven, supra*, 52 Cal.3d 336 at 342-343. None of these was held to be an impermissible revision; rather, each was upheld as an initiative amendment. *Raven, supra*, 52 Cal.3d 336 at 355.

Raven's holdings as to the propriety of these initiative amendments is consistent with *Brosnahan*, which upheld against an initiative revision argument the "Victim's Bill of Rights" (now Article I, Section 28, of the California Constitution). Among other things, the Victim's Bill of Rights initiative amended the California Constitution to: (i) provide for the mandatory ordering of restitution by convicted criminals; (ii) eliminate the exclusionary rule; (iii) limit bail by requiring judicial officers to consider the seriousness of the offense and previous criminal record of the defendant and to prohibit "own recognizance" release of any person charged with a serious felony (as defined); and (iv) permit the unlimited use, for impeachment or sentence enhancement in a criminal proceeding, of all prior felony convictions. *Brosnahan, supra*, 32 Cal. 236 at 241-243).

The *Brosnahan* Court upheld each of these initiative changes to the California Constitution against a challenge that they were revisions, writing: under

> V. Constitutional Revision or Amendment
>
> Petitioner's final argument is that Proposition 8 is such a "drastic and far-reaching" measure as to constitute a "revision" of the state Constitution rather than a mere "amendment" thereof.
>
> Faced with an identical argument in *Amador*, we acknowledged, "although the voters may accomplish an amendment by the initiative process, a constitutional revision may be adopted only after the convening of a constitutional convention and popular ratification or by legislative submission to the people." (22 Cal.3d at p. 221; see Cal. Const., art. XVIII.)
>
> In evaluating this contention, we employ a dual analysis, examining both the quantitative and qualitative effects of Proposition 8 upon our constitutional scheme. (*Amador*, 22 Cal.3d at p. 223.)

> On its face, the measure has a limited quantitative effect, repealing only one constitutional section (art. I, § 12, right to bail), and adding another (art. I, § 28, right to restitution, safe schools, truth-in-evidence, bail and use of prior convictions). We are satisfied that such a change is not "so extensive ... as to change directly the 'substantial entirety' of the Constitution by the deletion or alteration of numerous existing provisions ...." (*Ibid.*; see *Livermore v. Waite* (1894) 102 Cal. 113, 118-119 [36 P. 424].)
>
> **From a qualitative point of view, while Proposition 8 does accomplish substantial changes in our criminal justice system, even in combination these changes fall considerably short of constituting "such far reaching changes in the nature of our *basic governmental plan* as to amount to a revision** ...." (*Amador*, 22 Cal.3d at p. 223, italics added; see *McFadden v. Jordan, supra*, 32 Cal.2d 330, 348.)

Brosnahan, supra, 32 Cal.3d 236 at 260 (emphasis supplied). The *Brosnahan* Court concluded:

> In *Associated Home Builders, etc., Inc. v. City of Livermore* (1976) 18 Cal.3d 582, 591 [135 Cal.Rptr. 41, 557 P.2d 473, 92 A.L.R.3d 1038], Justice Tobriner, referring to the law creating the initiative and referendum procedures, wrote: "Drafted in light of the theory that all power of government ultimately resides in the people, the amendment speaks of the initiative and referendum, not as a right granted the people, **but as a power reserved by them**. Declaring it 'the duty of the court to jealously guard this right of the people' [citation], the courts have described the initiative and referendum as articulating 'one of the most precious rights of our democratic process' [citation]. '[I]t has long been our judicial policy to apply a liberal construction to this power wherever it is challenged in order that the right be not improperly annulled. If doubts can reasonably be resolved in favor of the use of this reserve power, courts will preserve it.' [Citations.]" (*Ibid.*, fns. omitted.)
>
> Consistent with our firmly established precedent, we have jealously guarded this precious right, giving the initiative's terms a liberal construction, and resolving reasonable doubts in favor of the people's exercise of their reserved power. We conclude that Proposition 8 survives each of the four constitutional challenges raised by petitioners.

Brosnahan, supra, 32 Cal.3d 236 at 261-262 (emphasis supplied).

Legislature v. Eu, a case decided shortly after *Raven*, involved a challenge to an initiative that imposed term limits and budgetary restraints. In upholding that initiative, including against a challenge it was a revision on a qualitative change basis, this Court wrote:

> **As indicated in *Raven*, a qualitative revision includes one that involves a change in the basic plan of California government, i.e., a change in its fundamental structure or the foundational powers of its branches.** (*Raven, supra*, 52 Cal.3d at pp. 352-355.) *Raven* invalidated a portion of Proposition 115 because it deprived the state judiciary of its foundational power to decide cases by independently interpreting provisions of the state Constitution, and delegated that power to the United States Supreme Court. (*Ibid.*)
>
> By contrast, Proposition 140 on its face does not affect either the structure or the foundational powers of the Legislature, which remains free to enact whatever laws it deems appropriate. The challenged measure alters neither the content of those laws nor the process by which they are adopted. No legislative power is diminished or delegated to other persons or agencies. The relationships between the three governmental branches, and their respective powers, remain untouched.

Legislature v. Eu (1991) 54 Cal.3d 492 at 509-510 (emphasis supplied).

This standard – that *a revision on a qualitative basis must involve a change in the basic plan of California government* – is to this day consistent throughout the jurisprudence of this Court. As Justice Moreno explained in his concurring opinion in *Californians for an Open Primary v. McPherson*, a 2006 case involving the power of the legislature to submit constitutional amendments to the voters and the most recent decision of this Court discussing whether an initiative change to the California Constitution is an amendment or revision:

> Another possible answer to the above questions is to take a conventional approach to distinguishing between revisions and amendments, as the Court of Appeal did below. This approach can be found in cases addressing challenges to voter initiatives. Voters can propose amendments to the Constitution that will be placed on the ballot if the requisite number of signatures are obtained, but they

> may not propose constitutional revisions. (See Cal. Const., art. XVIII, § 3; *Raven v. Deukmejian* (1990) 52 Cal.3d 336, 349, 276 Cal.Rptr. 326, 801 P.2d 1077.) In addressing challenges to voter initiatives on the grounds that they are unconstitutional revisions, we have recognized that **revisions "refer to a substantial alteration of the entire Constitution."** (*Amador Valley Joint Union High Sch. Dist. v. State Board of Equalization* (1978) 22 Cal.3d 208, 222, 149 Cal.Rptr. 239, 583 P.2d 1281.) As we elaborated: "our analysis in determining whether a particular constitutional enactment is a revision or an amendment must be both quantitative and qualitative in nature. For example, an enactment which is so extensive in its provisions as to change directly the 'substantial entirety' of the Constitution by the deletion or alteration of numerous existing provisions may well constitute a revision thereof. However, even a relatively simple enactment may accomplish such **far reaching changes in the nature of our basic governmental plan as to amount to a revision** also." (*Id.* at p. 223, 149 Cal.Rptr. 239, 583 P.2d 1281; see also *Raven v. Deukmejian, supra,* 52 Cal.3d at pp. 350-352, 276 Cal.Rptr. 326, 801 P.2d 1077.) Under this conventional approach, the two different amendments found in Resolution 103 are neither qualitatively so extensive nor quantitatively so far-reaching as to constitute a constitutional revision. Indeed, courts have been reluctant to find that even multiple significant constitutional changes combined into a single voter initiative constitute a revision. (See, e.g., *Brosnahan v. Brown* (1982) 32 Cal.3d 236, 242-243, 260-261, 186 Cal.Rptr. 30, 651 P.2d 274 [Proposition 8, making constitutional changes in the areas of criminal restitution, safe schools, admissibility of relevant evidence, bail, and use of prior felony convictions for impeachment and sentencing purposes, is not a constitutional revision].)

Californians for an Open Primary v. McPherson (2006) 38 Cal.4th 735 at 788 (emphasis supplied).

D. Proposition 8 Passes the Qualitative Effect Standard Test

Under the consistent jurisprudence of this Court, Proposition 8 cannot be a revision based on the qualitative standard, just as it obviously cannot be on the quantitative standard.

To meet the qualitative standard, the change effected by Proposition 8 must work "far reaching changes in the nature of our basic governmental plan" – the very workings of California's government. Proposition 8, which relates solely to

whether marriage is between a man and a woman only or also between a man and a man or a woman and a woman, not only does not come close to satisfying the qualitative standard, it has nothing whatsoever to do with it.

The hyperbole in the Petition and amicus letter before this Court, speculating as to the horrible changes that might be inflicted by future initiative amendments or future legislation, is irrelevant. Proposition 8 does nothing to change the fact that ". . . under the current governing California statute, registered domestic partners generally 'have the same rights, protections, and benefits, and [are] subject to the same responsibilities, obligations, and duties under law . . . as are granted to and imposed upon spouses.'" *Marriage Cases*, *supra*, 43 Cal.4th 757 at 805 (citation and footnote omitted). Moreover, use of speculation of this type as a grounds for finding an initiative otherwise an amendment to be a revision was soundly rejected in *Legislature v. Eu*, *supra*, 54 Cal.3d 492 at 510-511, *Brosnahan*, *supra*, 32 Cal.3d 236 at 258-261, and *Amador*, *supra*, 22 Cal.3d 208 at 227-228.

It is also not relevant that the *Marriage Cases* held that a fundamental right is involved. That does not make an initiative an amendment, just as it was not relevant that the revisions to the Constitution upheld in *Brosnahan* against a "revision by initiative" challenge involved fundamental constitutional rights, including: (i) eliminating the exclusionary rule (viewed by the United States Supreme Court as essential to protecting several federal constitutional protections (including against unlawful search and seizure and coerced confessions); (ii) limiting bail; and (iii) permitting the use, for impeachment and sentencing, of any prior federal conviction.

The issue is not whether this Court's decision in the Marriage Cases was correct as a matter of California constitutional law or reflected the law as it should be. Instead, under the consistent jurisprudence of this Court, as long as "far reaching changes the nature of our basic governmental plan" are not being made, as they are not by Proposition 8, it is the sovereign, reserved right of the People to amend the California Constitution to eliminate fundamental rights added to the Constitution by the People or set forth in opinions of this Court with which the People disagree. See the concurring opinion of Justice Mosk in the death penalty case of *People v. Frierson* (1979) 25 Cal.3d 142 at 189-190.

E. <u>This Court Should Not Stay The Effectiveness of Proposition 8</u>

I respectfully submit that this Court should not stay the certification and enforcement of Proposition 8 for at least the following two reasons.

First, under the existing jurisprudence of this Court, there is no reasonable probability the Petition will result Proposition 8 being declared invalid.

Second, if the certification and effectiveness of Proposition 8 is stayed, the effect will likely be tens of thousands of gay and lesbian marriages – a multiple of those to date – in a rush to beat the decision of this Court. That would not only be contrary to the will of the People as expressed in Proposition 8, but would create a very difficult situation if Proposition 8 were held valid..

What would become of those marriages if Proposition 8 were held to be retroactive or to otherwise invalidate those marriages because of its use of the word "recognized"? Given the maxim that laws and initiatives are to be interpreted so that they are constitutional, not unconstitutional, would the decision on retroactivity be affected by those marriages being a *fait accompli*, notwithstanding the vote of the People?

While gay and lesbian couples of course have an interest in having their unions called "marriages," California's domestic partnerships are unaffected by Proposition 8 and, by law, are substantively identical to marriage in all respects except the word "marriage" (*Marriage Cases, supra*, 43 Cal.4th 757 at 805). The interest of the People is: (i) in their sovereign, reserved initiative right, which this Court has described as "one of the most precious rights of our democratic process" (*Raven, supra*, 52 Cal.3d 336 at 341) and which is therefore both a fundamental right and an essential part of "the nature of our basic governmental plan," being held sacred and respected; and (ii) in their decision as reflected in Proposition 8 being effective on the day after it was passed by their vote, as provided in Article XVIII, Section 4, of the California Constitution. In balancing these interests in determining whether to grant a stay, particularly given the probability of success under the existing jurisprudence of this Court, I respectfully submit that the interest of the People should take precedence and a stay should not be granted.

IV. Conclusion

There can be no doubt Proposition 8 was not a constitutional revision under the consistent precedent of this Court. That is unquestionably true under both the quantitative and qualitative standards.

What is at stake in the Petition is not the right of gay and lesbian people, found by this Court in the *Marriage Cases* to be fundamental, to have their unions denominated "marriages." That is because the People have the sovereign right to amend the Constitution to change this Court's decision in that case, and they have validly done so.

This Court can therefore decide against the will of the People only by overruling or effectively disregarding a long, consistent line of cases – described in *Brosnahan* as "firmly established precedent", with the *Brosnahan* Court proudly adding that that it had "jealously guarded this precious right". *Brosnahan, supra*, 32Cal.3d 236 at 260. Were this Court to do that, it would trample upon and eviscerate the People's precious, reserved initiative right to amend the Constitution.

What is at stake here is thus nothing less than the interest of the People, and of this Court, in this Court fulfilling its

> . . . solemn duty jealously to guard the sovereign people's initiative power, 'it being one of the most precious rights of our democratic process.' Consistent with prior precedent, we are required to resolve any reasonable doubts in favor of the exercise of this precious right.

Raven, supra, 52 Cal.3d 336 at 341.

This Court, I respectfully submit, should fulfill that solemn duty and protect the "precious" fundamental right, of and reserved by the People, to amend the Constitution by initiative, making clear in denying the Petition that, under long standing, consistent, firmly established precedent, Proposition 8 was an amendment, not a revision, and as such was validly adopted by the People and can be changed by the People, by their initiative, if and when they see fit to do so.

My thanks to the Court for its consideration this letter, which I hope the Court will find helpful.

Respectfully submitted,

Steven Meiers

Steven Meiers

PROOF OF SERVICE

I declare that I am, and was at the time of service mentioned below, at least 18 years of age and not a party to the action known as *Karen L. Strauss, et al. v. Mark B. Horton, et al.* (S168047). My business address is 161 S. Woodburn Drive, Los Angeles, California 90049. On November 15, 2008, I caused to be served the following document

AMICUS CURIAE LETTER OF STEVEN MEIERS, IN OPPOSITION TO PETITION FOR WRIT OF MANDATE IN KAREN L. STRAUSS, ET AL. V. MARK B. HORTON, ET AL. (S168047)

by pacing a true copy thereof in an envelope addressed to each of the persons named below at the address shown below, with postage prepaid, in the post office box at the United States Post Office located at 200 South Barrington Place, Los Angeles, California 90049 the following manner:

Party	**Capacity**
Mark B. Horton, MD, MSPH State Registrar of Vital Statistics of the State of California Department of Public Health 1615 Capitol Ave., Ste. 73-720 P.O. Box 997377 Mail Stop 0500 Sacramento, CA 95899-7377 Telephone: (916) 558-1700	*Respondent* In his official capacity as State Registrar of Vital Statistics of the State of California & Director of the California Department of Public Health 1 Copy
Linette Scott, MD, MPH Deputy Director of Health Information & Strategic Planning of the California Department of Public Health 1616 Capitol Ave., Ste. 74-317 P.O. Box 997377 Mail Stop 5000 Sacramento, CA 95899-7377 Telephone: (916) 440-7350	*Respondent* In her official capacity as Deputy Director of Health Information & Strategic Planning for the California Department of Public Health 1 Copy

Edmund G. Brown, Jr. California Attorney General 1300 "I" Street P.O. Box 94255 Sacramento, CA 94244-2550 Telephone: (916) 445-9555	*Respondent* In his official capacity as Attorney General for the State of California 1 Copy
Counsel	**Attorneys For**
David Blair-Loy ACLU Foundation of San Diego and Imperial Counties P.O. Box 87131 San Diego, CA 92138-7131 Telephone: (619) 232-2121	*Petitioners* Karen L. Strauss, Ruth Borenstein, Brad Jacklin, Dustin Hergert, Eileen Ma, Suyapa Portillo, Gerardo Marin, Jay Thomas, Sierra North, Celia Carter, Desmund Wu, James Tolen and Equality California 1 Copy
Shannon P. Minter Melanie Rowen Catherine Sakimura Ilona M. Turner Shin-Ming Wong Christopher F. Stoll National Center for Lesbian Rights 870 Market St., Ste. 370 San Francisco, CA 94102 Telephone: (415) 392-6257	*Petitioners* Karen L. Strauss, Ruth Borenstein, Brad Jacklin, Dustin Hergert, Eileen Ma, Suyapa Portillo, Gerardo Marin, Jay Thomas, Sierra North, Celia Carter, Desmund Wu, James Tolen and Equality California 1 Copy
Gregory D. Phillips Jay M. Fujitani David C. Dinielli Lika C. Miyake Mark R. Conrad Munger Tolles & Olson, LLP 355 S. Grand Ave., 35th Floor Los Angeles, CA 90071-1560 Telephone: (213) 683-9100	*Petitioners* Karen L. Strauss, Ruth Borenstein, Brad Jacklin, Dustin Hergert, Eileen Ma, Suyapa Portillo, Gerardo Marin, Jay Thomas, Sierra North, Celia Carter, Desmund Wu, James Tolen and Equality California 1 Copy

Michelle Friedland Munger Tolles & Olson, LLP 560 Mission St., 27th Floor San Francisco, CA 94105 Telephone: (415) 512-4000	*Petitioners* Karen L. Strauss, Ruth Borenstein, Brad Jacklin, Dustin Hergert, Eileen Ma, Suyapa Portillo, Gerardo Marin, Jay Thomas, Sierra North, Celia Carter, Desmund Wu, James Tolen and Equality California 1 Copy
Jon W. Davidson Jennifer C. Pizer F. Brian Chase Tara Borelli LAMBDA Legal Defense and Education Fund, Inc. 3325 Wilshire Blvd., Ste. 1300 Los Angeles, CA 90010 Telephone: (213) 382-7600	*Petitioners* Karen L. Strauss, Ruth Borenstein, Brad Jacklin, Dustin Hergert, Eileen Ma, Suyapa Portillo, Gerardo Marin, Jay Thomas, Sierra North, Celia Carter, Desmund Wu, James Tolen and Equality California 1 Copy
Alan L. Schlosser Elizabeth O. Gill ACLU Foundation of Northern California 39 Drumm St. San Francisco, CA 94111 Telephone: (415) 621-2493	*Petitioners* Karen L. Strauss, Ruth Borenstein, Brad Jacklin, Dustin Hergert, Eileen Ma, Suyapa Portillo, Gerardo Marin, Jay Thomas, Sierra North, Celia Carter, Desmund Wu, James Tolen and Equality California 1 Copy
Mark Rosenbaum Clare Pastore Lori Rifkin ACLU Foundation of Southern California 1313 W. 8th St. Los Angeles, CA 90017 Telephone: (213) 977-9500	*Petitioners* Karen L. Strauss, Ruth Borenstein, Brad Jacklin, Dustin Hergert, Eileen Ma, Suyapa Portillo, Gerardo Marin, Jay Thomas, Sierra North, Celia Carter, Desmund Wu, James Tolen and Equality California 1 Copy

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Ethan Dettmer Frederick Brown Sarah Piepmeier Rebecca Justice Lazarus Enrique Monagas Kaiponanea Matsumura Gibson, Dunn & Crutcher LLP One Montgomery Street San Francisco, CA 94104 Telephone: (415) 393-8200 Lindsay Pennington Douglas Champion Lauren Eber Heather Richardson Gibson, Dunn & Crutcher LLP 333 South Grand Ave., 49th Fl. Los Angeles, CA 90071	*Amici Curiae* Senate President Pro Tempore Don Perata Senate President Pro Tempore Elect Darrell Steinberg Speaker of the Assembly Karen Bass Assembly Speaker Emeritus Fabian Nunez Senator Ron Calderon Senator Gilbert Cedillo Senator Ellen Corbett Senator Christine Kehoe Senator Sheila Kuehl Sentator Alan S. Lowenthal Senator Carole Migden Senator Alex Padilla Senator Mark Ridley-Thomas Senator Gloria Romero Senator Patricia Wiggins Assemblymember Jim Beall, Jr. Assemblymember Patty Berg Assemblymember Julia Brownley Assemblymember Anna M. Caballero Assemblymember Charles Calderon

	Assemblymember Joe Coto Assemblymember Kevin de Leon Assemblymember Mark DeSaulnier Assemblymember Mike Eng Assemblymember Noreen Evans Assemblymember Mike Feuer Assemblymember Felipe Fuentes Assemblymember Loni Hancock Assemblymember Mary Hayashi Assemblymember Edward P. Hernandez Assemblymember Jared Huffman Assemblymember Dave Jones Assemblymember Betty Karnette Assemblymember Paul Krekorian Assemblymember John Laird Assemblymember Mark Leno Assemblymember Lloyd E. Levine Assemblymember Sally J. Lieber Assemblymember Fiona Ma Assemblymember Anthony J. Portantino Assemblymember Lori Saldana Assemblymember Jose Siolorio Assemblymember Sandre R. Swanson Assemblymember Lois Wolk 1 Copy
LIBERTY COUNSEL Mary E. McAliser Post Office Box 11108 Lynchburg, VA 24506 100 Mountain View Road Suite. 2775 Lynchburg, VA 24506 Telephone: (434) 592-7000	*Proposed Intervenor* Campaign for California Families 1 Copy

I certify under penalty of perjury that the foregoing is true and correct, that the foregoing document(s) were printed on recycled paper, and that this Declaration of Service was executed by me on November 15, 2008, in Los Angeles, California.

William P. Granok